

## CALIFORNIA COASTAL COMMISSION

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# TH12

**Staff:**

SMR-SF

**Staff Report:**

January 28, 2005

**Hearing Date:**

February 17, 2005

## FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

**CEASE AND DESIST AND  
RESTORATION ORDERS:**

CCC-05-CD-01 and CCC-05-RO-01

**RELATED VIOLATION FILES:**

V-1-02-011

**PROPERTY LOCATION:**

865 New Navy Base Road,  
Fairhaven, Humboldt County  
**APN 401-141-03 (Exhibit 1)**

**DESCRIPTION OF PROPERTY:**

An approximately twelve-acre parcel on the Samoa peninsula (north spit) of Humboldt Bay, near the town of Fairhaven and west of the City of Eureka.

**PROPERTY OWNER:**

Dr. Laurence E. Badgley

**VIOLATION DESCRIPTION:**

Construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands.

**SUBSTANTIVE FILE DOCUMENTS:**

Cease and Desist and Restoration Order file Nos.  
CCC-05-CD-01 and CCC-05-RO-01  
Background Exhibits 1 through 20

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060 (c)(2) and (3),  
and Categorically Exempt (CG §§ 15061(b)(2), 15037,  
15038 and 15321)

## I. SUMMARY

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) directing Dr. Laurence E. Badgley (“Badgley”) to remove unpermitted development at 865 New Navy Base Road (“subject property”) and to restore the impacted area. The unpermitted development consists of the construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands (**Photo Exhibits 2a-2s**). Badgley is the owner of the subject property.

The subject property consists of an approximately twelve-acre parcel located in the Coastal Zone. The parcel contains areas of sandy fill, as well as forest, pond, beach, vegetated dunes, dune hollows, and wetland areas. The subject property is located almost entirely within Humboldt County’s coastal permit jurisdiction, while a smaller portion of the property that borders on Humboldt Bay is in the Commission’s retained coastal permit jurisdiction. Pursuant to Coastal Act Sections 30809, 30810 and 30811, the Humboldt County Community Development Services Department (HCCDS) formally requested assistance from the California Coastal Commission in a letter dated July 15, 2004, requesting that the Commission assume enforcement jurisdiction for the entire subject property and to order abatement of violations on the subject property.

Numerous unpermitted uses on the subject property, described above, are inconsistent with County zoning ordinances (which constitute the Implementation Plan portion of the certified Local Coastal Program or LCP) and are in violation of the certified LCP and resource protection policies of the Coastal Act. Under the County zoning ordinances, the subject property is zoned Coastal-Dependent Industrial (MC), with Archaeological Resources (A) and Coastal Wetlands (W) combining zones. The MC zone includes any coastal-dependent industrial use requiring a maintained navigable channel to function, including, for example: public docks, water-borne carrier import and export operations, ship building and boat repair, commercial fishing facilities, and aquaculture support facilities. County staff have visited the site and noted that existing unpermitted development on the subject property includes a wrecking and salvage yard (as defined in Humboldt County Code Section 313-158), which is neither a principally nor a conditionally permitted use in the MC zone. Three residences on the subject property (a primary single family residence and two smaller residential structures) pre-date the Coastal Act and County zoning and general plan designations. The County has determined that these three residences are legal non-conforming units.

Regarding non-conforming agricultural uses on the subject property, the County has indicated that Badgley must establish what, if any, agricultural uses have been continuous on the subject property since prior to the Coastal Act. County zoning provides that if any non-conforming use ceases for any reason for a continuous period of two years or more, the land previously devoted to the non-conforming use becomes subject to all the regulations as to use for the zone in which such land is located. The County has also repeatedly reminded Badgley that any existing non-

conforming agricultural uses cannot be expanded. The proposed Orders require Badgley to provide evidence of continuing use for all non-conforming agricultural development on the subject property. If no evidence is submitted and/or if the County does not determine specific, listed non-conforming agricultural uses on the subject property to be vested, such uses will be considered unpermitted development and will be treated as such under the terms of the proposed Restoration Order (i.e., they shall be removed).

The unpermitted development activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act. Humboldt County has formally requested that the Commission take this enforcement action.

As discussed more fully within the following report, the unpermitted development is also inconsistent with the California Coastal Act, including Sections 30231 (Biological productivity; water quality) Section 30232 (oil and hazardous substance spills) and 30240 (Environmentally Sensitive Habitat Areas) of the Public Resources Code. The unpermitted development is not consistent with the LCP Policies 30240, 30231 and 30232, Chapter 3.18 of the LCP, or with Humboldt County zoning codes, which constitute the Implementation Plan portion of the certified LCP. The unpermitted development has impacted the habitat values of the subject property, which includes environmentally sensitive dune hollow (coastal scrub shrub) and wetland habitat. The impacts from the unpermitted development remain at the subject property. Thus, the unpermitted development on the subject property is causing continuing resource damage, as defined in Section 13190 of the Commission’s regulations. Therefore, the Commission may issue a Restoration Order under Section 30811 of the Coastal Act.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

### **III. MOTIONS**

Staff recommends that the Commission adopt the following two motions:

#### **1.A. Motion**

*I move that the Commission issue Cease and Desist Order No. CCC-05-CD-01 pursuant to the staff recommendation.*

#### **1.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### **1.C. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order number CCC-05-CD-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit.

#### **2.A. Motion**

*I move that the Commission issue Restoration Order No. CCC-05-RO-01 pursuant to the staff recommendation.*

#### **2.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### **2.C. Resolution to Issue Restoration Order**

The Commission hereby issues Restoration Order number CCC-05-RO-01, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a

coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

#### **IV. PROPOSED FINDINGS**

##### **A. History of Violation**

Humboldt County planning division staff received a complaint about unpermitted development on the subject property in May 2002. In a letter dated May 25, 2002, Humboldt County Community Development Services Department (County) staff sent a certified letter to Badgley (**Exhibit 3**), in which staff listed various alleged unpermitted development on the property, including an addition to and remodeling of a residence without a building permit, filling of wetlands, construction and residential occupancy of a yurt, construction of a yurt and hot tub on the beach portion of the property, and the storage of hazardous materials. The letter from the County explained options for resolving the alleged violations, including voluntary abatement and/or seeking permits for allowable uses under the site's zoning designation. Badgley responded in a letter dated June 6, 2002, in which he stated that the County's informant gave false information (**Exhibit 4**). County staff responded in a letter dated June 10, 2002, noting that Badgley's response did not resolve the alleged violations and again explaining options for resolving them (**Exhibit 5**). County staff visited the subject property on June 20, 2002 and verified the unpermitted development at the site.

In a letter dated September 24, 2002 County staff sent another certified letter to Badgley and set a deadline of October 31, 2002 for Badgley to indicate how he would resolve the violations on the subject property (**Exhibit 6**). The county's second letter noted that in addition to previously noted unpermitted development, staff site visits found that additional unpermitted development had taken place, including the placement of large poles in the ground, the placement of a large yurt structure with detached kitchen and bathroom, conversion of a storage shed into an apparent medical lab, construction of a corral, grading (cut and fill) in wetlands, construction of a new hot tub and platform, installation of electrical services, and storage of dock facilities, all without benefit of permits (see photo **Exhibits 2a-2s**).

Badgley failed to respond by the October 31, 2002 deadline set by County staff, and therefore, in a certified letter dated October 31, 2002, County staff indicated that the matter would be referred to the County Code Enforcement Unit (**Exhibit 7**). County staff received a letter dated November 5, 2002, from Badgley's attorney, which assured the County that Badgley intended to submit a permit application and bring the site into compliance (**Exhibit 8**). In a letter dated January 3, 2003, County staff noted that they had received no indication that Badgley was making any progress toward satisfying County permit requirements, and that County would refer the matter to the County Code Enforcement Unit (**Exhibit 9**). Badgley subsequently met with County planning staff in February 2003 for an application assistance meeting. On June 23, 2003 Badgley submitted a coastal development permit application to the County, with a Plan of Operations that proposed approximately thirty uses on the twelve-acre property. The application included an incomplete site plan that shows some but not all of the existing development on the subject property (the site plan primarily depicts the existing pre-Coastal residence locations), and does not depict the location of all proposed uses or structures (**Exhibit 10**).

In a letter dated July 23, 2003, County staff deemed Badgley's permit application (CDP-02-113) incomplete (**Exhibit 11**). The County indicated that a Biological Assessment and Cultural Resources Survey were required in order to complete the application (in addition to a revised plan of operations and evidence of other required approvals), and set a deadline of September 23, 2003 for submittal of the Biological Assessment and Cultural Resources Survey. Badgley failed to meet this deadline, and to date the County has not received either of the reports and CDP-02-113 remains incomplete. County staff and Commission enforcement staff met with Badgley on the subject property on May 27, 2004 and County staff requested that Badgley inform the County in writing whether he would limit his permit application for the proposed activities on the site to a boat building operation. During this visit, the County informed Badgley that this was one of the few proposed uses that *may* be permissible on the subject property, given the Coastal-Dependent Industrial site zoning. In a letter dated July 20, 2004, Badgley stated that he was willing to withdraw only five of the approximately thirty proposed uses in his permit application Plan of Operations (**Exhibit 12**). In a letter dated July 23, 2004, County staff recommended that Badgley submit an amended Plan of Operation for his application, focusing solely on the proposed boat building aspects of the plan, and to submit a revised plot plan showing a) everything currently on the parcel, b) the items Badgley intended to remove, and c) a depiction of the proposed boat building facility including docks, buildings, materials to be used, and materials to be stored on-site accessory to the boat building. (**Exhibit 13**). This letter also reminded Badgley that his application would remain incomplete until he submitted a Biological Assessment and Cultural Resources Survey.

In a letter dated July 15, 2004, the Humboldt County Community Development Services Department (HCCDS) formally requested that the California Coastal Commission enforce on the County's behalf regarding the unpermitted development on the subject property (**Exhibit 14**). The County noted that few of Badgley's proposed uses are consistent with the current zoning that is incorporated as the Implementation Plan portion of the certified LCP for Humboldt County. The County also noted that only two of Badgley's proposed uses *may* be permissible and in addition, none of the existing unpermitted development on the subject property is permitted under the Coastal Act or LCP.

On December 15, 2004, the Commission sent a Notice of Intent (NOI) to Commence Cease and Desist Order and Restoration Order Proceedings to Badgley (**Exhibit 15**). The NOI stated the basis for issuance of the proposed Cease and Desist and Restoration orders, stated that the matter was tentatively being placed on the Commission's February 2005 hearing agenda, and provided the opportunity to respond to allegations in the NOI with a Statement of Defense form.

Commission enforcement staff spoke with Badgley's attorney on January 3, 2005, and received a letter from him dated January 3, 2005, requesting 1) a postponement of formal enforcement proceedings, 2) a deadline for submittal of a revised CDP application to the County, and 3) an extension of time for submittal of the Statement of Defense form (**Exhibit 16**). Staff discussed options with Badgley's attorney for resolving the violations on the property amicably and voluntarily. In a letter dated January 4, 2005, staff denied the extension request, and noted that Badgley had ample time to file a complete CDP application but had failed to do so (**Exhibit 17**) in over two and a half years since the County had first notified him (in May 2002) of the

violations on the subject property. Badgley's attorney submitted a Statement of Defense on January 5, 2005 (**Exhibit 18**). In a letter dated January 7, 2005 to Badgley's attorney, staff proposed draft language for a potential Consent Order for the voluntary resolution of the Coastal Act violations on the subject property (**Exhibit 19**). In this letter, staff also requested that the Biological Assessment be submitted by January 24, 2005, and that Badgley's attorney contact staff by January 24, 2005 to provide a response regarding the proposed Consent Order. The Biological Assessment was not provided to Commission staff by the requested January 24, 2005 deadline. Staff telephoned Badgley's attorney on January 25, 2005, and was informed that Badgley's assistant was still reviewing the Consent Order language. Badgley's attorney had no response when questioned about whether Badgley was at all likely to resolve the violations voluntarily. Staff informed Badgley's attorney that the Commission therefore would be proceeding with formal enforcement actions. In a letter dated January 27, 2005, Badgley's attorney asserted that nine structures on the property pre-date the Coastal Act, stated that the Biological Assessment is being prepared and will be forwarded as soon as received, and indicated that several deadlines proposed by Commission staff would work better if they were slightly longer (**Exhibit 20**). Staff spoke with Badgley's attorney on January 27, 2005, and indicated that staff was available to continue discussions regarding a possible Consent Order, but that due to the meeting schedule and the need to move toward a resolution of the violations at the subject property, staff was proceeding with its recommendations for issuance of formal enforcement orders at the Commission's February hearing. Staff indicated that if Badgley does not contest the issuance of the Orders and complies with the Orders, staff is always willing to discuss possible deadline extensions as is provided for in all enforcement orders.

## **B. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of this Cease and Desist and Restoration Order, consists of the construction, placement and maintenance of unpermitted development, including (but not limited to): creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands.

## **C. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal Act, which states, in relevant part:

*If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist. The order may also be issued to enforce any requirements of a certified local coastal plan or port master plan, or any requirements of this division which are subject to the jurisdiction of the certified program or plan, under any of the following circumstances:*

*1) The local government or port governing body requests the commission to assist with, or assume primary responsibility for, issuing a cease and desist order.*

The development activity that has occurred on the subject property meets the definition of “development” set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600 and the LCP, and the County requested that the Commission take action and issue a Cease and Desist Order. Therefore, the Commission may issue a Cease and Desist Order under Section 30810 of the Coastal Act.

#### **D. Basis for Issuance of Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal Act, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that 1) the development has occurred without a coastal development permit from the commission, local government, or port governing body; 2) the development is inconsistent with this division; and 3) the development is causing continuing resource damage.*

##### **1. Development Has Occurred Without a Coastal Development Permit**

The unpermitted development activity that is the subject of this Restoration Order is included within the definition of “development” contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, unpermitted grading, placement and erection of structures, and solid waste disposal are “development” as defined by Section 30106.

Pursuant to Section 30600(a) of the Coastal Act, “development” requires a coastal development permit. In this case, no coastal development permit has been obtained for the subject unpermitted development.

##### **2. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development meets the definition of “development” which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in the LCP and Chapter 3 of the Coastal Act. The unpermitted development is not consistent with Sections 30107.5, 30231, and 30240 of the Coastal Act. The unpermitted development is not consistent with Policies 30240, 30231 and 30232 of the LCP, Chapter 3.18 of the LCP, and with Humboldt County zoning codes, which constitute the Implementation Plan portion of the certified LCP.

### **Environmentally Sensitive Habitat Area**

Section 30107.5 of the Coastal Act states:

*“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Section 3.30 B.1.a. of the Humboldt Bay Area Plan (LCP) specifically identifies environmentally sensitive habitats:

*Environmentally sensitive habitats within the Humboldt Bay Planning Area include: 1) wetlands and estuaries, including Humboldt Bay... 2) Vegetated dunes along the North Spit to the Mad River... 3) Rivers, creeks, gulches, sloughs and associated riparian habitats... and 4) Critical habitats for rare and endangered species listed on state or federal lists.*

Section 30240 of the Coastal Act and Policy 30240 of the LCP state:

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

The subject property is directly adjacent to Humboldt Bay and contains wetlands and dunes that are mapped in the LCP. The unpermitted development clearly disrupts the wetland habitat value because any fill of a wetland (including placement of solid material on wetland areas) reduces its ability to function. Water is the main requirement for a functional wetland. If water is removed, or isn't present in the wetland for as long, then wetland function will be degraded. Therefore, wetland function could be degraded because of actions that 1) disrupts water supply through direct fill of a wetland, other sorts of covering of a wetland, diversion of water, or draining, 2) degrades water quality through chemical contamination or temperature modification, 3) results in removal of wetland vegetation through grading, grazing, or mowing. Degradation of function means that the same plants won't grow, the wetland won't provide the same water filtration, percolation, and stormwater runoff storage, and wildlife use of that feature could be reduced.

In addition to being mapped in the LCP, in many recent decisions, the Commission has considered entire dune areas to be ESHA. Dune systems are a relatively rare feature along the California coastline. In addition, dunes often support rare or threatened plant species and other plant species that are considered to have special value because of their role in supporting the

dune system. Because dune systems are dynamic and the extent and location of plant coverage can vary from year to year within the dune system, the Commission has considered entire dune areas to be ESHA, even those portions of the dunes that are not vegetated at any particular time. Because dunes migrate mainly as a result of changes in wind conditions, dunes are not particularly stable and can easily be disturbed by excavation and filling activities. Excavation in a dune can change wind patterns in a manner that can cause increased wind erosion of the remaining portions of the dunes. Placement of fill can act to anchor dunes in a way that interferes with the natural dynamic systems and cause changes in the extent and coverage of the dune area. Therefore, dunes such as those located on the subject property are environmentally sensitive habitat pursuant to Section 30107.5 of the Coastal Act as they are rare and of special value because of their unique nature or role in the ecosystem, and can be easily disturbed or degraded by human activities and developments.

High levels of groundwater and high rainfall on the subject property may all contribute to the leaching of toxic chemicals or compounds capable of degradation from the unpermitted development into the environment. The unpermitted development on the subject property includes creosote-soaked timbers and piles of tires, which contain toxic chemicals that could leach into the surrounding environment, contaminating wetlands, groundwater, and the adjacent bay and, in turn, potentially affecting fish, animals and water quality in the area. The unpermitted development includes numerous structures that appear to be located in wetland areas, covering the wetlands and therefore degrading their function.

Therefore, the unpermitted development is inconsistent with Sections 30107.5 and 30240 of the Coastal Act, and with the Humboldt County LCP.

#### **Biological productivity; water quality**

Section 30231 of the Coastal Act and Policy 30231 of the LCP state:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

As discussed above, the unpermitted development on the subject property includes creosote-soaked timbers and piles of tires, which contain toxic chemicals or compounds capable of degradation that could be leaching into the surrounding environment, contaminating wetlands, groundwater, and the adjacent bay and, in turn, potentially affecting fish, animals and water quality in the area. Therefore, the Commission finds that the unpermitted development does not maintain the biological productivity and quality of coastal waters and wetlands and is not consistent with Section 30231 of the Coastal Act and Policy 30231 of the LCP.

### **Oil and Hazardous Substance Spills**

Section 30232 of the Coastal Act and Policy 30232 of the LCP state:

*Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.*

As discussed above, the unpermitted development on the subject property includes creosote-soaked timbers and piles of tires, which contain toxic chemicals or compounds capable of degradation that could be leaching into the surrounding environment, contaminating groundwater and the adjacent bay and, in turn, potentially affecting fish, animals and water quality in the area. Therefore, the Commission finds that the unpermitted development does not protect against spillage of hazardous substances and is not consistent with Section 30232 of the Coastal Act.

### **Archaeological and Paleontological Resources**

Chapter 3.18 of the LCP states:

*Where new development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The County specifically raised the issue of cultural and archaeological resources, and noted in their July 23, 2003 letter to Badgley (**Exhibit 11**) “the Wiyot Tribe has requested that a Cultural Survey be conducted by an independent, licensed archaeologist, and stated that the project site is located in a culturally significant area.” In the July 23, 2003 letter to Badgley, the County informed Badgley that a Cultural Survey was required in order to complete his CDP application. Badgley has failed to submit such a report to the County. The unpermitted development may have impacted cultural resources on the subject property, and removal and restoration work (particularly any work that may require heavy equipment and could result in excavation of material) could also affect cultural resources on the subject property. All removal and restoration activities that are part of the proposed Orders require all work to be performed in accordance with County zoning regulations regarding archaeological resource areas outside Shelter Cove (Humboldt County Code Section 313-16.1).

### **3. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing continuing resource damage, as defined by Section 13190(c) of the Commission’s regulations:

*‘Continuing’, when used to describe ‘resource damage’, means such damage, which continues to occur as of the date of issuance of the Restoration Order.*

The unpermitted development remains on the subject. As described below, the unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur

as of the date of this proceeding and damage to resources is “continuing” for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission’s regulations defines the term “resource” as it is used in Section 30811 of the Coastal Act as follows:

*‘Resource’ means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

The term “damage” in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

*‘Damage’ means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.”*

In this case, the resource damage is the continuing degradation of environmentally sensitive habitat caused by the presence of the unpermitted solid waste, as well as potential chemical and physical degradation and movement through the environment of these materials. The unpermitted development is causing the ongoing adverse impacts to coastal resources that are described in subsection 2 above. As long as the unpermitted development and filled wetland areas remain on the subject property, continuing resource damage will continue to occur.

**E. California Environmental Quality Act (CEQA)**

The Commission finds that issuance of a Cease and Desist Order and Restoration order to compel the removal of the unpermitted development and restoration of the property is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**F. Allegations**

1. Dr. Laurence E. Badgley owns the property at 865 New Navy Base Road (APN 401-141-03).
2. Unpermitted grading (cut and fill in wetlands) and placement of development without permits have occurred on the subject property.
3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the subject property.

4. The unpermitted development is inconsistent with Chapter 3 policies of the Coastal Act, including Sections 30231, 30232 and 30240.
5. The unpermitted development is inconsistent with Policies 30240, 30231 and 30232 of the LCP, Chapter 3.18 of the LCP, and with Humboldt County zoning codes, which constitute the Implementation Plan portion of the certified LCP.
6. The unpermitted development is causing continuing resource damage.

**G. Violators' Defenses and Commission's Response**

Badgley's attorney submitted a Statement of Defense form and attachments dated January 5, 2005 on behalf of Badgley, which is included as **Exhibit 18**. Page 1 of the submitted form states: "This answering Respondent denies, generally and specifically, each factual allegation contained on the Notice of Intent." The following paragraphs summarize the more specific defenses contained in the Statement of Defense, and set forth the Commission's response to each defense.

**Badgley's Defense:**

1. **"The Notice of Intent, dated December 15, 2004, is the first time most of these alleged violations have been specifically addressed by either the County or Coastal Commission. On June 20, 2002, Michael Richardson, of the County Planning Division, met with Badgley, at Badgley's request in response to allegations of violations. Dr Badgley offered to show Mr. Richardson anything and any location, residence, or building on the property. Mr. Richardson declined the offer stating that his job was only to help Badgley through the permit process in order for him to 'pursue the activities and projects' he had in mind. Mr. Richardson refused to view any alleged violations during his visit. Badgley, at this time, informed Mr. Richardson a number of applications had been made within the previous years without response and Mr. Richardson agreed to look into these."**

**Commission's Response:**

The Commission disagrees that the December 15, 2004 Notice of Intent is the first time most of the alleged violations have been raised. Beginning in 2002, certified letters from the County to Badgley, dated May 25, 2002, September 24, 2002, and October 31, 2002 clearly stated the nature of the alleged violations, which to date continue to exist on the subject property.

Regarding Badgley's assertion that he had attempted to get a coastal development permit for 'improvements' to the property, the September 24, 2002 letter from Humboldt County to Badgley (**Exhibit 6**) noted that no coastal development permit applications had been received by the County from Badgley. Badgley received an approval for a business license from the County on June 21, 2000, for a company called Samoa Maritime Industries. Badgley applied for but did not receive a building permit for the placement of a perimeter foundation under an existing structure. County records for the property also indicated that a 1986 building department permit

was issued for remodeling of an existing residence (this permit pre-dates Badgley's ownership of the subject property), which is not relevant to this enforcement matter.

The County has no other permit records on file for the subject property. Badgley has been given numerous deadlines to submit the information necessary for completion of his CDP application (including the Biological Assessment and Cultural Resources Survey) and has failed to comply.

**Badgley's Defense:**

2. **"Following additional discussion with Mr. Richardson, a complete and extensive Plan of Operations was submitted with an application to both the County and the Coastal Commission in mid 2003. Upon the County's request for both biological and cultural assessments, Badgley sought out the assistance of experts in these fields in order to complete the process.**

**In January 2004, Mad River Biologists completed the biological assessment. Tamara Gedik, in her report to Badgley, stated that she submitted their report to Alyson Hunter at HCCDS. See Mad River Biologists attached [the attachment consists of a title page of a biological constraints analysis prepared by Mad River Biologists, stamped and labeled 'DRAFT' and dated November 24, 2003, and one page of text from the draft report that discusses mitigation measures for proposed aquaculture activities on the subject property that would be "likely to have a significant impact on sensitive biological resources" including wetlands on the site and on adjacent Humboldt Bay. See Exhibit 18, pages 7 and 8].**

**Jaime Roscoe and Steven Gantham, MA, RPA were consulted regarding cultural assessment. It was determined that the existence of previous cultural assessments, most recently in the late 1980s, as well as the existing Army Corps of Engineers dredging reports showing past dredge fill being dumped on the property, that a new cultural study was not advised. This information was passed on to Alyson Hunter in a letter dated August 2003 to which she did not dispute.**

**Notice of Intent references archaeological and paleontological resources; however, previous studies of the property have not found these, and have in fact determined that much of the property is covered with a depth of bay dredge material."**

**Commission's Response:**

Despite the assertions above, enforcement staff has confirmed with Humboldt County that to date, no Biological Assessment has been submitted to County staff. The two pages of the Biological Assessment submitted with the Statement of Defense consist only of a title page of a biological constraints analysis prepared by Mad River Biologists, stamped and labeled 'DRAFT' and dated November 24, 2003, and one page (page 26 of 62) of text from the draft report that discusses mitigation measures for proposed aquaculture activities on the subject property that would be "likely to have a significant impact on sensitive biological resources" including wetlands on the site and on adjacent Humboldt Bay. The two pages of the draft Biological

Assessment provided in the Statement of Defense are incomplete and do not contain the required information, analysis and conclusions necessary for the completion of Badgley's CDP application (see **Exhibit 18, pages 7 and 8**).

Badgley has provided no evidence that the Biological Assessment has been finalized, and County staff confirmed that they have never received any copy, whether Draft or Final, of this report. Moreover, our January 7, 2005 letter (**Exhibit 19**) requested that Badgley submit the Biological Assessment to staff by January 24, 2005, but he has not submitted the report to either the County or Commission staff. In a letter dated January 27, 2005, Badgley's attorney stated that the Biological Assessment is being prepared and will be forwarded as soon as it is received (**Exhibit 20**).

No information was provided about the qualifications of the two individuals consulted regarding cultural resources, nor was any written report from them supplied to the County or Commission staff. Furthermore, the County specifically stated in their July 23, 2003 letter to Badgley (**Exhibit 11**) "the Wiyot Tribe has requested that a Cultural Survey be conducted by an independent, licensed archaeologist, and stated that the project site is located in a culturally significant area." The County clearly stated the requirement for a current cultural survey that meets the satisfaction of the Wiyot Tribe, and set a deadline for submittal of this report. No such report has been prepared or submitted to the County.

Enforcement staff confirmed with Alyson Hunter at Humboldt County that she never received a letter in August 2003 regarding cultural assessment for the subject property. No letter with this date exists in the County file, and Badgley has not provided a copy of such letter to Commission staff.

The subject property does contain areas of sandy fill from Humboldt Bay dredge disposal, but such fill does not cover the entire subject property. The property also contains areas of forest, pond, vegetated dunes, dune hollows, and beach. The presence of fill on a portion of the subject property does not in any way address or eliminate the requirement for a current cultural resources survey.

### **Badgley's Defense:**

3. **"Research through the County Planning Division, conducted prior to the development of the Plan of Operations, listed the zoning of parcel in question only as Coastal-Dependent Marine Industrial. Notice of Intent states the 'property constitutes a wrecking and salvage yard.' The property very well could have been described as such during Elmer Newby's tenancy with the property's previous owner (see Newby attached). Badgley took great strides, through legal action and at his own expense, to clean the property of the enormous amounts of trash, wrecked heavy equipment, hazardous waste, scrap and various debris (see photos attached). Everything currently stationed on the property has great value to its use in the proposed boat building as detailed in the Plan of Operations."**

**UCommission's Response:**

Badgley acquired the property in December 1997 and was aware at this time of the “enormous amounts of trash” on the property. He also knew or should have known the property was not a licensed, permitted waste disposal site. Even if a previous owner deposited some of the unpermitted development on the subject property, Badgley is responsible for the current condition of the property. A property owner is liable for actions of previous owners who may have created the public nuisances on the subject property based on Civil Code 3483, which states:

*Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.*

In addition, in *(Leslie Salt Co. v. San Francisco Bay Conservation and Development Com. (1984) 153 Cal. App.3d 605, 622)*, the court held that:

*“whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner’s active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question.”*

Similarly, a property owner is liable under the Coastal Act for unpermitted development currently existing on their property even if a previous owner performed the unpermitted development. Regardless of the potential future value of existing material on the property for potential future activities, unpermitted storage of stockpiled building and other materials is not permitted under the Coastal Act, and the materials cannot be stockpiled pending the as yet unknown outcome of Badgley’s incomplete permit application.

The photographs of the subject property that Badgley submitted with his Statement of Defense are undated and do not establish the condition of the subject property at any specified date, and do not reflect the current condition of the subject property. While Badgley may have removed some unpermitted development from the subject property, unpermitted development remains and it is apparent that Badgley has placed additional unpermitted development on the property since acquiring it in 1997.

Badgley’s CDP application with the County remains incomplete. In a letter dated July 23, 2004, County staff requested that Badgley submit an amended Plan of Operation for his application, focusing solely on the proposed boat building aspects of the plan, and to submit a revised plot plan showing a) everything currently on the parcel, b) the items Badgley intended to remove, and c) a depiction of the proposed boat building facility including docks, buildings, materials to be used, and materials to be stored on-site accessory to the boat building (**Exhibit 13**). To date, the County has not received an amended plan from Badgley. Badgley may store any materials he wants to save at a licensed storage facility.

**Badgley's Defense:**

4. **“The creosote-soaked pilings have been in existence on the property for at least 25 years (see Newby Letter, attached). County has known of their existence and has not noted as a violation until now. Pilings are to be utilized in the boat building operation as detailed in the Plan of Operations. They will be stored until use [sic] in a manner that will not violate the Coastal Act.”**

**Commission's Response:**

There is no evidence that the creosote-soaked pilings are being stored appropriately with the environmental controls necessary to prevent leaching of toxic chemicals into the surrounding environment and avoid environmental damage (**Exhibit 2a**). This is of particular concern with materials such as creosote-soaked pilings. The County has noted a wide variety of unpermitted materials on the subject property. This resource damage is continuing and needs to be addressed. Badgley may store any materials he wants to save at a licensed storage facility.

This defense raises similar issues as Defense #3. See Commission Response to Defense #3 above.

**Badgley's Defense:**

5. **“A large number of tires were left on the property after Badgley had purchased it with the agreement that they would be removed by the previous owner's tenant, Elmer Newby. Badgley has disposed of the majority of these tires, the few that remain are to be used as bumpers for an existing barge. Tires are intended for marine industrial use, if their temporary storage is unacceptable then other storage arrangements can be made.”**

**Commission's Response:**

This defense raises the same issues as Defense #3 and #4. See Commission Response above.

**Badgley's Defense:**

6. **“All operational vehicles on the property are for business needs are currently used [sic]. The County has never made a complaint to Badgley regarding these vehicles. There are only two inoperable vehicles at the property, one is an antique collectible and the other is the caretaker's which he has been repairing.”**

**Commission's Response:**

Photographs of the subject property indicate that there are numerous vehicles on the subject property, not all of which appear to be used for “business needs” (see **Exhibit 2o and 2p**, which depict a recreational vehicle and a parking meter monitoring vehicle) and some of which appear

to be non-operational (see **Exhibit 2j**, which shows a truck and a vehicle with what appears to be an open hood parked behind stacks of stored materials).

The proposed Orders require Badgley to provide evidence of operability for all vehicles on the subject property or to remove them. The antique collectible vehicle and the caretaker's vehicle that is being repaired may be excluded from the removal order, under the terms of the Order itself (See Restoration Order paragraph A5).

**Badgley's Defense:**

7. Regarding steel and metal piles, including wire, and axels: **"Much of these predate purchase of the property by Badgley with the agreement that they would be removed by the previous owner's tenant, Elmer Newby. Badgley removed a vast amount of metal scrap at his own expense. Materials currently present will be used in the boat building as presented in the Plan of Operations. There have been no complaints to his knowledge until now."**

**The axels in question are railroad car axels (four of them) that are unique items which were purchased at the rare times they were offered for sale. They are necessary for the construction of the proposed marine railway as described in the Plan of Operations (which the County has already verbally stated is acceptable use of the property)."**

**Commission's Response:**

Badgley has proposed approximately thirty different uses for the subject property, but has failed to complete his CDP application for even one proposed use, and has not obtained the required CDPs from the County or Commission, nor any of the other required approvals from other regulatory bodies (Harbor Commission, Department of Fish and Game, and NOAA Fisheries) that have been requested since 2002. Badgley has no permit waiver for unpermitted storage of materials that may or may not be needed for operations for which he has obtained no permits. The County has repeatedly raised the issue of the various unpermitted materials at the subject property. Badgley may store any materials he wants to save at a licensed storage facility.

This defense raises similar issues as Defenses #3. See Commission Response above.

**Badgley's Defense:**

8. Regarding yurts and sheds: **"Only a single portable 17 foot diameter tent structure exists unoccupied and used for storage. Sheds measuring no more than 120 square feet interior floor are not held to permit requirements as long as they meet set back limits and are used for storage only."**

**Commission's Response:**

Badgley has asserted, but has provided no evidence that yurt structures on the subject property are not occupied. In fact, the original violation report from the County indicated that at least one

yurt with a detached kitchen and bathroom was occupied as a residence on the subject property (**Exhibit 6**). In addition, Badgley has provided no information that unpermitted structures have not been placed in wetland areas, or that they are set back from wetland areas.

Regarding exemptions for accessory structures, the Uniform Building Code (UBC) notes that a one-story accessory structure, storage shed, or other similar use does not require a permit if it is less than 120 square feet. This exemption applies to one accessory structure of no more than 120 square feet total. Badgley indicates that the yurt is seventeen feet in diameter, which if it is roughly circular means it covers approximately 227 square feet. This yurt alone exceeds the size limit for permit exemptions and there are multiple unpermitted sheds, yurts, and structures on the subject property. Moreover, we note that this UBC exemption is intended to apply to accessory structures, and yet there is no permitted primary structure that could serve as a basis for an exempt accessory structure.

**Badgley's Defense:**

9. Regarding platforms: **“Two ‘platforms’ exist. Badgley, based on his former business manager’s reported research was led to believe they did not require permits as neither ‘platform’ pierces the ground and both are portable.”**

**Commission's Response:**

Badgley provides no evidence regarding what constituted his “former business manager’s reported research.” The Coastal Act and Local Coastal Program govern the subject property, which define development as “the placement or erection of any solid material or structure...” Structures clearly do not have to “pierce the ground” nor be immobile to be development, and therefore require a CDP under the Coastal Act and LCP.

**Badgley's Defense:**

10. Regarding grading: **“Some of the already existing road and parking area potholes have been filled. Since this was maintenance on an already road/parking, the fill was done with the understanding that it did not require permitting for repair. A degraded area pointed out in the biological assessment will be allowed to recover naturally as recommended by Mad River Biologists (see Mad River Biologists attached).”**

**Commission's Response:**

The Commission regulations regarding repair and maintenance activities that require a permit provide that a CDP is required for “Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area...” (CCR Section 13252a(3)). Areas of this site mapped as wetland in the certified LCP are directly adjacent to portions of the road on the subject property, and Commission and County site visits verified the presence of wetland areas adjacent to the road (**Exhibit 2s**). Wetland areas on the subject property, which are

environmentally sensitive habitat areas, are clearly within 50 feet of portions of the road, and maintenance activities for the road would therefore not be exempt and would require a CDP.

In addition to possible fill of wetlands that may be associated with grading of the adjacent road on the subject property, some of the unpermitted development (sheds, stacks of rusting pipes, building materials, etc) may have been placed in wetland areas (**Exhibit 2a-2s**). Placement of any solid material or structure in a wetland constitutes unpermitted fill of wetlands. Any unpermitted fill in wetland areas on the subject property would be removed (and, if necessary, the wetland areas would be restored) under the terms of the proposed Orders.

The one page of draft text from the Biological Assessment that Badgley attached to his Statement of Defense does not contain complete information about where wetlands are located on the property, which wetland areas have been filled or otherwise impacted, and which wetland areas require active restoration. Accordingly, a final, complete Biological Assessment is required as part of the proposed Orders, and shall be incorporated into any recommendations regarding restoration in the Removal and Restoration Plan that is to be submitted for the Commission's review and approval (See Restoration Order paragraph A10).

**Badgley's Defense:**

11. Regarding corrals: **"The property has historically been used agriculturally for both crops and animals with corrals in continued existence. Initial meetings with County Planner, Robert Wall, indicated the property was historically used agriculturally, that it has continued to be used agriculturally and that the County would like to see more land returned to agricultural use. He stated that he and the other planners would find this to be a continued acceptable use for the property (see Memo for the Record). More recently, a letter from Alyson Hunter, dated January 2003 (see attached), stated 'the Department can consider the agricultural uses as legally nonconforming' and 'will support the introduction of an appropriate number of horses and/or goats onto the parcel'."**

**Commission's Response:**

The County has indicated that Badgley must establish what, if any, agricultural uses have been continuous on the subject property since prior to the Coastal Act. County zoning provides that if any non-conforming use ceases for any reason for a continuous period of two years or more, the land previously devoted to the non-conforming use becomes subject to all the regulations as to use for the zone in which such land is located (Humboldt County Code Section A314.25, Non-conforming Uses and Structures). The County has also reminded Badgley that any existing use cannot be expanded (**Exhibits 11 and 13**). To date, Badgley has not provided evidence of continuous use; therefore, he has not established any vested agricultural uses on the site and has not demonstrated that he has not expanded any agricultural uses on the site. However, in an attempt to accommodate Badgley, and include the County's input on this issue, we have specifically addressed this issue in the proposed Restoration Order (see Restoration Order paragraph A4).

**Badgley's Defense:**

12. **“Notice of Intent relies on Sections 13196(e) of the Commission’s regulations, stating ‘restoring the property affected by the violation to the condition it was in before the violation occurred.’ Please see attached photographs depicting property condition prior to Badgley’s acquirement. It is strongly urged that this request be reconsidered.”**

**Commission’s Response:**

This defense states an apparent misunderstanding of what restoration would require. Restoration would seek to restore the site to the condition that existed prior to the placement of any unpermitted development on the property, not to the conditions that existed when Badgley acquired the property in 1997. It is clear that unpermitted development existed on the property when Badgley acquired it, and as explained in Commission Response to Defense #3, Badgley is responsible for the current condition of the property and is liable for actions of previous owners who may have created the public nuisances on the subject property.

The photographs of the subject property that Badgley submitted with his Statement of Defense are undated and do not establish the condition of the subject property at any specified date, and in fact do not reflect the current condition of the subject property. While Badgley may have removed some unpermitted development from the subject property, unpermitted development remains and it is apparent that Badgley has also placed additional unpermitted development on the property since acquiring it in 1997.

**Badgley's Defense:**

13. **“Section 30810(a) of the Coastal Act authorizes issuance of Cease and Desist only after a public hearing. There is no evidence that a public hearing has taken place regarding this property. Section 30811 of the Coastal Act authorizes restoration only after a public hearing, if it has occurred without a coastal development permit, is inconsistent with this division, and is causing continuing resource damage. It is not apparent that all four of these criteria have been met.”**

**Commission’s Response:**

This defense states an apparent misunderstanding of statements contained in the Notice of Intent letter. The NOI explains the Coastal Act authority and outlines the formal enforcement process, including requirements for issuance of enforcement orders. The NOI explains that staff is scheduling a public hearing regarding this matter, not that one has already occurred. The public hearing is to be held on February 17, 2005.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

### **CEASE AND DESIST ORDER CCC-05-CD-01**

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby orders and authorizes Dr. Laurence E. Badgley, his agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter referred to as “Respondents”) to cease and desist from engaging in any further development on the subject property, unless authorized pursuant to the Coastal Act, and to remove unpermitted development as set forth below.

### **RESTORATION ORDER CCC-05-RO-01**

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission hereby orders and authorizes the Respondents to restore the subject property as described below.

Three residences on the subject property (a primary single family residence and two smaller residential structures) have been determined to pre-date the Coastal Act and County zoning and general plan designations. The County has determined that the three residences are legal non-conforming units. All other development on the subject property, however, is considered unpermitted under the Coastal Act, and shall be removed. Accordingly, the Coastal Commission hereby authorizes and orders the following:

- A. Within 60 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Removal and Restoration Plan (“Plan”). Respondents shall at the same time submit a second copy of this Plan to the attention of the Humboldt County Community Development Services Department (HCCDS). The Plan shall outline the excavation and removal of all unpermitted development on the subject property. The Plan shall include and discuss the following elements:
  - 1. A copy of the Biological Assessment (including wetlands delineation) that was apparently being prepared for Badgley’s 2002 Coastal Development Permit application with Humboldt County (CDP-02-113).
  - 2. A current, scaled site plan depicting all existing development on the subject property.
  - 3. A list of the unpermitted development items, linked to the scaled site plan. Designate as (W) on the list those items that are located in delineated wetland areas, designate as (R) on the list those items that are not located in wetland areas and that require no excavation for removal, and designate as (E) on the list those items that are not located in wetland areas but that will require excavation for removal.
  - 4. Regarding agricultural uses on the subject property, submit to HCCDS sufficient evidence of continuing use for all non-conforming agricultural development on the subject property. If no or insufficient evidence is submitted and/or if the County does not determine specific, listed non-conforming agricultural uses on the subject property

to be vested, such uses will be considered unpermitted development and will be treated as such under the terms of this Order (i.e., they shall be removed).

5. Regarding vehicles, both operable and inoperable, on the subject property, provide evidence of current registration status, operability, and existing use of all vehicles on the subject property. As noted Commission Response to Defense #6, the two inoperable vehicles noted in Badgley's Statement of Defense are exempt from this removal order if these vehicles are described and listed as noted above. If no or insufficient evidence is submitted regarding vehicles on the subject property, they will be considered unpermitted development and will be treated as such under the terms of this Order (i.e., they shall be removed).
6. Photographs of all existing development on the subject property, linked to the scaled site plan.
7. A description of all equipment that will be used for removal of the unpermitted development (for example- how will inoperable vehicles be removed?).
8. Removal and restoration work (particularly any work that may require heavy equipment and could result in excavation of material) could affect cultural resources on the subject property. All removal and restoration activities that will be carried out as part of the proposed Orders shall be performed in accordance with County zoning regulations regarding archaeological resource areas outside Shelter Cove (Humboldt County Code Section 313-16.1). Archaeological monitors, including representatives from the Wiyot Tribe, shall be present during all removal and restoration activities. The Plan should acknowledge this and the proposed schedule should include this.
9. A section detailing removal of unpermitted development in areas outside of wetland areas. This section would include all R and E items on the list of unpermitted development.
10. A section detailing removal of fill or other unpermitted development in wetland areas on the subject property and restoration of these areas. This section would include all W items on the list of unpermitted development. A qualified biologist or wetland restoration specialist shall prepare this section of the Plan, shall incorporate information contained in the Biological Assessment, and shall include appropriate measures to restore and monitor affected wetland areas on the subject property.
11. A description including name and location of an appropriate, licensed disposal site (or, if usable materials are being stored for future use, an appropriate storage facility) located outside of the Coastal Zone where the unpermitted development will be taken. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required.
12. A schedule for performance of the work and a proposed series of dates and times for performing the removal work. Respondents will finalize a work schedule after

contacting County planning staff and the Wiyot Tribe, to ensure work is performed on dates when County staff and archaeological resource monitors can be present at the subject property to monitor the removal work. Provide notice of the removal work schedule to the Coastal Commission.

13. A provision that all work to be performed under this Order shall be done in compliance with all applicable laws.

14. Addresses for report submittals:

California Coastal Commission, Attn: Sheila Ryan  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Humboldt County Community Development Services, Planning Division  
Attn: Alyson Hunter  
3015 H Street  
Eureka CA 95501

- B. Within 90 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:

1. Remove the unpermitted development from non-wetland areas of the subject property.
2. Remove unpermitted fill and unpermitted development from any affected wetland areas on the subject property and restore the affected wetland areas according to approved plans and the schedule contained therein.
3. Remove all unpermitted development to an appropriate, licensed disposal site (or if usable materials are being stored for future use, to an appropriate storage facility) located outside of the Coastal Zone. Should the disposal or storage site be located in the Coastal Zone, a coastal development permit shall be required.
4. Within 60 days of completion of the removal activities described in paragraph B submit to the Executive Director of the Commission and to the Humboldt County Community Development Services Department a report documenting the restoration of the subject property. This report shall include a summary of dates when work was performed and photographs that show the removal of the unpermitted development on the subject property, as well as photographs of the subject property after removal of all unpermitted development. Respondents shall submit this report to the Commission and Humboldt County **no later than October 31, 2005**.
5. Perform any ongoing, long-term monitoring that is required as part of any wetland restoration on the subject property, according to approved plans.

## **I. Persons Subject to the Orders**

Dr. Laurence E. Badgley, and his agents, contractors and employees, and any persons acting in concert with any of the foregoing.

## **II. Identification of the Property**

The property that is subject to the orders is described as follows:

865 New Navy Base Road, on the Samoa Spit near Fairhaven, Humboldt County, Assessor's Parcel Number 401-141-03.

## **III. Description of Unpermitted Development**

The development that is the subject of the Cease and Desist and Restoration Orders includes, but is not limited to: creosote-soaked timbers, piles of tires, metal pipes, stored building materials, dock structures, operable and inoperable stored vehicles, piles of steel and other metals including wire and truck axles, structures including yurts, sheds, platforms and corrals, additions to residences, addition of bathroom(s) and septic system connection(s), and grading (cut and fill) in wetlands.

## **IV. Effective Date and Terms of the Orders**

The effective date of the Orders is the date of their approval by the Commission. The Orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

## **V. Findings**

The Orders are issued on the basis of the findings adopted by the Commission at the February 2005 hearing, as set forth in the attached document entitled "Findings for Cease and Desist Order CCC-05-CD-01 and Restoration Order CCC-05-RO-01".

## **VI. Compliance Obligation**

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

## **VII. Deadlines**

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

## **VIII. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the orders are issued may file a petition with the Superior Court for a stay of this order.

Executed in \_\_\_\_\_ on \_\_\_\_\_,

on behalf of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## **Exhibits**

1. Site Map and Location.
2. Site photographs.
3. Certified complaint letter dated May 25, 2002 from Humboldt County Community Development Services Department (County) to Badgley.
4. Letter dated June 6, 2002 from Badgley to County.
5. Letter dated June 10, 2003 from County to Badgley.
6. Certified complaint letter dated September 24, 2002 from County to Badgley.
7. Certified complaint letter dated October 31, 2002, from County to Badgley.
8. Letter dated November 5, 2002, from Badgley's attorney to County.
9. Letter dated January 3, 2003, from County to Badgley.
10. Site plan submitted with Badgley's June 23, 2003 application (CDP-02-113) to County.
11. Letter dated July 23, 2003 from County to Badgley, deeming application CDP-02-113 incomplete and setting deadline of September 23, 2003 for submittal of Biological Assessment and Cultural Resources Survey.
12. Letter dated July 20, 2004 from Badgley to County.
13. Letter dated letter dated July 23, 2004 from County to Badgley.
14. Letter dated July 15, 2004, from County to California Coastal Commission (Commission), formally requesting that the Commission enforce on the County's behalf regarding unpermitted development on the subject property.
15. Notice of Intent (NOI) letter dated December 15, 2004 from Commission staff to Badgley.
16. Letter dated January 3, 2005 from Badgley's attorney to Commission staff.
17. Letter dated January 4, 2005 from Commission staff to Badgley's attorney.
18. Statement of Defense with cover letter and attachments dated January 5, 2005.
19. Letter dated January 7, 2005 from Commission staff to Badgley's attorney.
20. Letter dated January 27, 2005 from Badgley's attorney to Commission staff.



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**Exhibit 1.** Area location map for subject property, Samoa peninsula, Humboldt County.



**Exhibit 2a.** Stack of creosote-soaked logs on subject property.



**Exhibit 2b.** Stacks of wood pallets and concrete blocks on subject property.



**Exhibit 2c.** Hot tub and deck on subject property.



**Exhibit 2d.** Stacks of rusting pipes on subject property.



**Exhibit 2e.** Yurt and sheds on subject property.



**Exhibit 2f.** Sheds and trailer on subject property.



**Exhibit 2f.** Tented storage area on subject property.



**Exhibit 2g.** Sheds on subject property.



April 2003

**Exhibit 2i.** Yurt, sheds, and tented storage area on subject property.



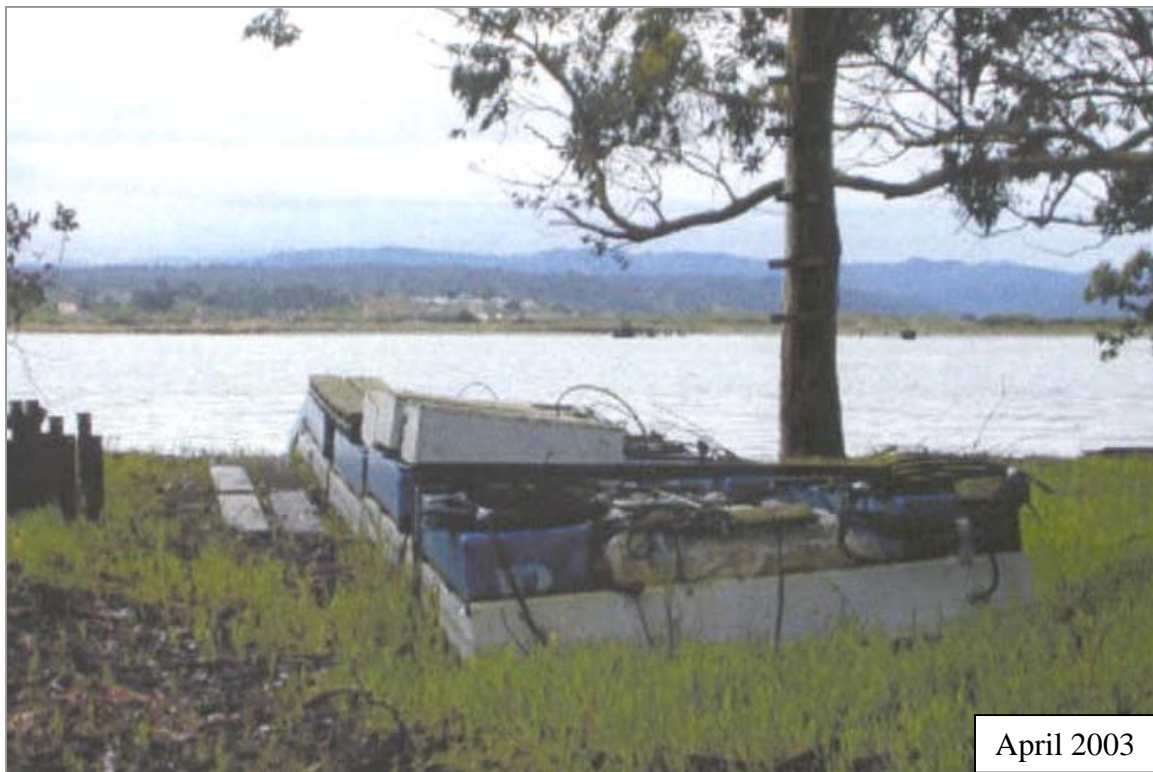
April 2003

**Exhibit 2j.** Materials stored under tarps on subject property.  
Arrows are pointing at two vehicles in background.



April 2003

**Exhibit 2k.** Stored dock materials on subject property.



April 2003

**Exhibit 2l.** Stored dock materials on subject property.



**Exhibit 2m.** Metal pipes, vehicles, trailers, stacks of tires, and heavy equipment on subject property.



**Exhibit 2n.** Trailer stacked with metal pipes and other materials on subject property.



**Exhibit 2o.** Rusting pipes, crane, and recreational vehicle on subject property.



**Exhibit 2p.** Roofed storage/parking area and stockpiled materials on subject property.



May 2004

**Exhibit 2q.** Trucks, metal pipes, and large shed/trailer on subject property.



May 2004

**Exhibit 2r.** Stacked tires and stored heavy equipment on subject property.



standing water  
(wetland area)



April 2003

**Exhibit 2s.** Wetland adjacent to road on subject property.